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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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OCT 27 2005

In the Matter of)

Request for Review by)

CONNECT2 INTERNET NETWORK, INC.)

of Decision of Universal Service)
Administrator)

Federal Communications Commission
Office of Secretary

CC Docket No. 02-06
471 Application No. 105155

Funding Request No. 106036

Funding Request No. 106514

Funding Year 1998

Annunciation Elementary School

CONNECT2 INTERNET NETWORK, INC. REQUEST FOR REVIEW

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SUMMARY

Connect2 Internet Network Inc. ("Connect2") hereby seeks review by the Federal Communications Commission ("Commission") of the Universal Service Administrative Company ("USAC") Administrator's Decision on Appeal, dated August 31, 2005, dismissing as untimely Connect2's appeals of recovery demands issued by the Schools and Libraries Division ("SLD") of USAC with respect to Funding Request Nos. 106036 and 106514 for equipment and services provided to the Annunciation Elementary School ("AES"). USAC apparently based its determination of untimeliness on the assumption that "Notification" letters previously had been sent to Connect2 on March 15, 2005. However, Connect2 has no record of receiving any such notification letters with respect to AES or the Funding Requests at issue here. In fact, USAC's failure to follow its own procedures was one of the bases for Connect2's appeal, which was dismissed as untimely by USAC on August 31, 2005. Contrary to USAC's determination, the appeals were timely filed within 60 days of the Initial Demand Letters issued by SLD. The Initial Demand Letters constitute the actions by which Connect2 was aggrieved and the first notice provided to Connect2 that USAC was seeking to recover from Connect2 funds disbursed for AES.

In any event, the Commission should grant a waiver of any applicable filing deadline in order to consider the merits of Connect2's appeal. Connect2's participation in the E-Rate Program at numerous schools in New York and New Jersey (including AES) already has been the subject of a criminal prosecution by the United States Department of Justice ("DOJ"). That prosecution, in which USAC and the Commission's Office of Inspector General ("OIG") actively participated, resulted in a plea agreement that provides, among other things, for a civil forfeiture of \$290,000, an amount which DOJ determined to represent "the amount of proceeds

obtained as a result of the offense.” Having determined that the claims against Connect2 involved an “indication of fraud, the presentation of a false claim, or a misrepresentation,” the Commission was required to, and did, turn these matters over to DOJ for prosecution and cannot now revisit those claims in the form of the recovery actions based on rules and procedures adopted in the intervening years.

Moreover, Connect2 has been denied due process in connection with the current payment demands. USAC did not provide Connect2 with a copy of the Audit Report that forms the basis for the payment demands until more than 8 months after the Audit Report was issued and long after USAC apparently already had decided to seek recovery from Connect2. Connect2 repeatedly has requested an opportunity to review all of the records upon which USAC has based its decision to seek repayment from Connect2 (all of Connect2’s records were seized by the FBI in 2002), but USAC has never responded to those requests. The Commission should grant review of the USAC Decisions, consider the merits of Connect2’s appeal, and exercise its discretion to terminate collection efforts with respect to these claims. At a minimum, due process requires that Connect2 be afforded notice of the basis for, and an opportunity for hearing with respect to, the recovery demands at issue here.

REQUEST FOR REVIEW AND PETITION FOR WAIVER

Connect2 Internet Networks, Inc. ("Connect2"), by counsel and pursuant to Sections 54.719 through 54.721 of the Commission's Rules, hereby requests review of the above-captioned Decision on Appeal by the Universal Service Administrative Company ("USAC") dated August 31, 2005 ("USAC Decision"), a copy of which is attached hereto as Exhibit 1. The USAC Decision dismissed without consideration Connect2's appeals of two Demand Payment Letters ("Initial Demand Letters") and two Second Request Demand Payment Letters -- Past Due Notices ("Second Demand Letters") issued by the Schools and Libraries Division ("SLD") of USAC. Those letters seek repayment by Connect2 of \$19,828 with respect to two Funding Requests (Nos. 106036 and 106514) for Funding Year 1998 ("FY 1998") at Annunciation Elementary School ("AES").

USAC dismissed Connect2's appeal on the grounds that Connect2's appeal "was postmarked more than 60 days after the date your Notification of Commitment Adjustment Letter was issued" -- completely ignoring the fact that one of the bases for Connect2's appeal to USAC was that it had not received any prior "Notification of Commitment Adjustment Letter" with respect to AES. Pursuant to Section 1.3 of the Commission's Rules, Connect2 also hereby petitions for waiver of the 60-day period within which to appeal USAC's demands, to the extent that such waiver is required in order for USAC or the Commission to consider the substantive merits of Connect2's appeals.

The Commission should grant review, reverse the USAC Decision and consider the substantive merits of Connect2's appeal because the appeal was not untimely and: (a) Connect2's involvement in the E-Rate Program at this and numerous other schools in New York

and New Jersey already has been the subject of a criminal prosecution by the United States Department of Justice ("DOJ") -- with the knowledge, participation and cooperation of USAC and the Commission's Office of Inspector General ("OIG") -- in which a compromise on this and other claims was reached in the form of a plea agreement and civil forfeiture more than 2 years ago; (b) the determination to treat these matters as fraudulent claims by Connect2 required the claims to be transferred to the DOJ, effectively depriving the Commission of jurisdiction over them; (c) Connect2 has been denied due process with respect to the SLD claims; (d) USAC's payment demands are based on an audit of the E-Rate Program at AES performed by the OIG in the summer of 2004 -- years after the Funding Period in question;¹ and (e) the amounts involved in the applicable Funding Request Numbers are de minimis in any event and collection will require expenditure of amounts exceeding the amount at issue.

Background

On May 24, 2005, SLD sent two Initial Demand Letters addressed to "Mr. John Angelides, Connect2 Internet Networks, Inc., 26 Bay Street, Staten Island, New York,"² demanding repayment from Connect2 of a total of \$19,828 in funds disbursed for FY 1998 for equipment and services at AES. Copies of the Initial Demand Letters are annexed as Exhibit 3. The Initial Demand Letters stated that "you were recently sent a Notification of Improperly

¹ A copy of the Audit Report dated August 12, 2004 issued by the Office of Inspector General ("OIG") with respect to AES ("Audit Report") is included in Exhibit 2. Also included in Exhibit 2 are related memoranda: (a) from the Acting Chief of the Wireline Competition Bureau to the Inspector General dated August 11, 2004 ("Carlisle Memo"); (b) from the Managing Director to the Inspector General dated August 12, 2004; and (c) from the Inspector General to the Chairman dated August 12, 2004 ("Feaster Memo").

² On December 23, 2003, Mr. Angelides was debarred by the Commission and was expressly prohibited from engaging in any activities "associated with or related to the schools and libraries support mechanism, including the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting or advising applicants or service providers regarding the schools and libraries support mechanism." See Notice of Debarment, File No., DA 03-4088, 18 FCC Rcd. 26722 (December 23, 2003) ("Angelides Debarment Notice").

Disbursed Letter (sic) informing you of the need to recover funds for the Funding Request Number(s) (FRNs) listed on the Funding Disbursement Report of that letter.”³ However, Connect2 has no record of ever receiving such a notification with respect to AES or either of the Funding Requests at issue here. The only prior correspondence from SLD regarding AES was a letter dated on April 19, 2005 transmitting a copy of the OIG Audit Report for AES dated August 12, 2004.

On June 22, 2005 (less than 30 days after receiving the Initial Demand Letters), Connect2 responded in writing to USAC and appealed from the Initial Demand Letters. Among other things, Connect2 specifically stated that it had no record of ever receiving any “Notification of Improperly Disbursed Letter (sic)” from USAC regarding AES. The Initial Demand Letters constituted the first notice to Connect2 that USAC was seeking to recover funds from Connect2 for AES, and Connect2 responded to USAC by filing an appeal letter less than 30 days after it received the Initial Demand Letters. Connect2 also informed USAC in its response to the Initial Demand Letters that all of Connect2’s records had been seized by the FBI in 2002 and had not been returned.⁴ Connect2 requested that USAC “advise undersigned counsel as soon as possible regarding whether when, and where the relevant records might be made available for inspection and copying” so that Connect2 might prepare a more substantive response to the Initial Demand Letters. A copy of Connect2’s June 22, 2005 appeal letter to USAC is attached as Exhibit 4.

³ The Initial Demand Letters never specified the date of the “Notification of Improperly Disbursed (sic) Letter” allegedly sent by USAC regarding AES, but rather stated only that the letter had been sent “recently.”

⁴ Connect2’s records were seized by the FBI in furtherance of the criminal prosecution of Mr. Angelides. Shortly before this Petition was filed, the FBI indicated that it was willing to release the documents back to Connect2, but Connect2 does not yet have them.

USAC apparently ignored Connect2's June 22, 2005 letter and sent two more "Second Request Demand Payment Letters -- Past Due Notices" ("Second Demand Letters") to Connect2 on June 24, 2005. Copies of USAC's Second Demand Letters are attached as Exhibit 5. Among other things, the Second Demand Letters incorrectly stated that Connect2 had not responded to the Initial Demand Letters. In addition, the Second Demand Letters stated that prior "Notification of Commitment Adjustment Letters" (rather than "Notification of Improperly Disbursed Letters (sic)" as referenced in the Initial Demand Letters) had afforded Connect2 "the opportunity to appeal the validity of the debt." Finally, the Second Demand Letters informed Connect2 for the first time that it had "an opportunity to inspect and copy the invoices and the records pertinent to the debt."

On July 21, 2005 (again, less than 30 days after receiving USAC's Second Demand Letters), Connect2 again responded in writing to USAC, appealed the Second Demand Letters, and requested that USAC rescind the Second Demand Letters pending a decision on Connect2's appeal of the Initial Demand Letters. Among other things, Connect2 informed USAC that the Second Demand Letters were wrong because Connect2 had responded to the Initial Demand Letters and attached copies of its June 22 response and appeal. Connect2 also stated that (as with the "Notification of Improperly Disbursed Letter (sic)" referenced in the Initial Demand Letter) it had no record of ever receiving any "Notification of Commitment Adjustment Letter" for AES or for the Funding Requests at issue here. Finally, Connect2 again specifically requested an opportunity to review and copy the relevant records in order to defend itself, since its own records had been seized by the FBI and had not been returned. A copy of Connect2's July 21, 2005 written response and appeal to USAC is attached as Exhibit 6.

Completely ignoring the substance of Connect2's written responses to both the Initial and the Second Demand Letters, the USAC Decision simply dismissed Connect2's appeal without consideration because it was not filed within 60 days of the date of the "decision letter being appealed." Ironically, the USAC Decision for the first time provided Connect2 with the alleged date (March 15, 2005) of the earlier "Notification of Improperly Disbursed Letters (sic)" (as referenced in Initial Demand Letters) or the "Notification of Commitment Adjustment Letters" (as referenced in the Second Demand Letters). Thus, the USAC Decision: (a) dismissed as untimely Connect2's appeals of the only notices it ever received of USAC's action regarding AES; and (b) confirmed that USAC already had determined to seek recovery from Connect2 -- based on the purported Notification letters (in whatever form) allegedly issued to Connect2 -- months before it ever bothered to provide Connect2 with the Audit Report that apparently forms the basis for the alleged Notification Letter and Initial and Second Demand Letters.

Argument

I. Connect2's Appeal To USAC Was Not Untimely

Although SLD sent separate Initial and Second Demand Letters for each of the two FRNs at issue here, USAC issued only one Administrator's Decision on appeal letter, dated August 31, 2005, dismissing Connect2's appeal without consideration:

Our records show that your appeal was postmarked more than 60 days after the date your Notification of Commitment Adjustment Letter was issued, as shown above. Federal Communications Commission (FCC) rules require applicants to postmark appeals within 60 days of the date on the decision letter being appealed. FCC rules do not permit the School and Libraries Division (SLD) to consider your appeal.

See USAC Decision at 1 (emphasis added). The Commission should review and reverse the USAC Decision because: (a) Connect2 never received any prior Notification of Commitment

Adjustment Letters regarding AES; (b) notices sent by SLD to Mr. Angelides months after he was debarred from all activities relating to the schools and libraries program cannot be relied upon to provide timely notice of SLD's claims against Connect2 concerning that program; (c) the USAC Decision applied the wrong standard in finding the appeal untimely; (d) a waiver of the 60-day rule is warranted under the circumstances presented here; and (e) the substantive merits of Connect2's appeals warrant consideration by the Commission in any event.

A. Correspondence Sent To Mr. Angelides After His Debarment Cannot Be Relied Upon To Provide Notice To Connect2.

Mr. Angelides was debarred by the Commission in December 2003 from all "activities associated with and related to the schools and libraries support mechanism," including "consulting with, assisting or advising applicants or service providers regarding the schools and libraries support mechanism." Angelides Debarment Notice, 18 FCC Rcd. at 26722. That debarment did not apply to Connect2. Id. Nevertheless, SLD continues to attempt to provide notice to Connect2 of its decisions to seek recovery of certain funds by sending correspondence to Mr. Angelides. In this case, the alleged "Notification of Improperly Disbursed Letters (sic)" (referenced in the Initial Demand Letters) and the alleged "Notification of Commitment Adjustment Letters" (referenced in the Second Demand letters) purportedly were addressed to Mr. Angelides more than a year after his debarment. Nevertheless, USAC apparently relied exclusively upon the efficacy of that "notice" in dismissing Connect2's appeal as untimely based on its failure to file within 60 days of the date of purported "Notification" Letters, despite the fact that Connect2 had no record of receiving them. Having debarred Mr. Angelides, SLD and USAC cannot now rely upon correspondence allegedly sent to him more than a year after his debarment as sufficient to provide notice to Connect2.

B. Connect2 Was Not "Aggrieved" Until The Payment Demands Were Issued.

Section 54.719(a) of the Commission's Rules states that any "person aggrieved by an action taken by a division of the administrator" may seek review of that decision at USAC. Section 54.720 provides that a request for review must be filed within sixty days of the issuance of the decision by which the person was aggrieved. Although USAC dismissed Connect2's appeal because it was "postmarked more than 60 days after the date your Notification of Commitment Adjustment Letter was issued," Connect2 was not aggrieved until SLD sought recovery of funds from Connect2 in the Initial and Second Demand Letters and it had no notice of any adverse action by USAC prior to receiving those letters. Connect2's appeal was filed less than 30 days after it received the Initial and Second Demand Letters.

Contrary to USAC's Decision, Connect2 did not receive either a "Notification of Improperly Disbursed Letter (sic)" or a "Notification of Commitment Adjustment Letter" with respect to either of the Funding Requests that are the subject of the Initial and Second Demand Letters. In fact, the failure to receive any prior notification of these demands regarding AES was one of the bases for Connect2's appeal. See Connect2's Appeal Letters, Exhibits 4 and 6. Even if Connect2 had received any of the "Notification" letters allegedly sent on March 15, 2005, those letters could not provide adequate notice to Connect2 to trigger its obligation to appeal the decision to recover funds from Connect2 because USAC failed to provide Connect2 with a copy of the Audit Report upon which that decision was based until more than a month later. Moreover, despite repeated requests by Connect2 to inspect and copy all of the records relating to the USAC recovery demands, USAC has never made those records available and has never even responded to Connect2's requests. Connect2 became "aggrieved" only when SLD sent the Initial Demand Letters to Connect2 demanding that Connect2 repay specific funds. Connect2

filed timely appeals of the Initial and Second Demand Letters, which constituted the only notice that Connect2 had concerning USAC's attempt to recover funds from Connect2.

C. Good Cause Exists For Waiver Of the 60 Day Filing Period

Good cause exists for waiver of the 60 day rule and substantive consideration of the merits of Connect2's appeal. If they were sent at all, the March 15, 2005 "Notification" Letters concerning Connect2 apparently were sent to Mr. Angelides. However, Mr. Angelides had been debarred in 2003 and by March of 2005 USAC clearly knew or should have known that Mr. Angelides was undergoing extensive medical treatments for lung cancer which had spread to his brain. Both USAC and the Commission actively cooperated with DOJ in the prosecution of Mr. Angelides and should have been aware of his medical condition -- which led the presiding Federal Judge to postpone sentencing of Mr. Angelides with the consent of the U.S. Attorney's office that prosecuted him.⁵ Moreover, USAC has been on notice for nearly a year, based on submissions by Connect2 in response to other payment demands issued by USAC, that Mr. Angelides was undergoing extensive cancer treatments. Connect2's June 22, 2005 Appeal Letter from counsel specifically informed USAC that Connect2 had not received any of the prior correspondence referenced in the Initial or Second Demand Letters. Connect2 should not be penalized because USAC elected to send correspondence to Mr. Angelides after his debarment while he was undergoing cancer treatment.

The public interest also warrants a waiver of the procedural deadline (if necessary) and substantive consideration of the issues raised in Connect2's appeal. The

⁵ On August 25, 2005, Mr. Angelides finally was sentenced to one year of home confinement, due in part to his medical condition. He also has made the first payment on the forfeiture amount and the balance is to be paid on or before February 25, 2006.

Commission has stated that "if there are unique reasons why a particular entity believes recovery for a rule violation is inappropriate, that party is always free to present such information in seeking review of USAC's decision to recover monies, pursuant to section 54.722" of the rules. See Schools and Libraries Universal Service Support Mechanism, Fifth Report and Order, 19 FCC Rcd. 15808 (Aug. 2004) ("Schools and Libraries Fifth R&O"), at ¶29 (emphasis added).⁶ See also Federal-State Joint Board On Universal Service, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd. 15252 (July 2004), at ¶10 n.30 ("any service provider is free to challenge a recovery action directed to it if the time frame for seeking an appeal from USAC or the Commission has not yet run.") (emphasis added). As set forth herein, there are unique and substantial reasons why USAC's efforts to collect the funds sought from Connect2 are inappropriate under the circumstances presented here. USAC's collection efforts present "novel questions of fact, law and policy," not just with respect to Connect2 and Mr. Angelides, but also with respect to their ultimate impact upon the schools and the overall goals and objectives of the Schools and Libraries program.⁷ The Commission should not rely on USAC's erroneous interpretation of the filing requirements in sections 54.719 and 54.720 to avoid consideration of these issues on the merits, particularly where: (a) USAC's calculation of the applicable deadline is based on the questionable premise that correspondence sent to Mr. Angelides after his debarment constituted effective notice to Connect2; (b) Connect2 has no record of receiving any of the prior correspondence identified in the Initial and Second Demand Letters; and (c) SLD did

⁶ Among other things, Section 54.722 states that "requests for review that raise novel questions of fact, law or policy" shall be considered by the full Commission.

⁷ As the Court of Appeals noted more than 30 years ago, "sound administrative procedure" requires an agency "to take into account considerations of hardship, equity or more effective implementation of overall policy" in evaluating requests for waiver of its rules. The "combination of a general rule and limitations is the very stuff of the rule of law, and with diligent effort and attention to essentials administrative agencies may maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

not provide a copy of the relevant Audit Report to Connect2 until more than a month after the date that the "Notification of Commitment Adjustment Letters" allegedly were sent to Connect2. Thus, Connect2 respectfully requests a waiver of the filing periods set forth in Section 54.720, to the extent that such waiver is required to allow substantive consideration of the merits of its appeal.

II. Connect2's Involvement In The E-Rate Program Already Was The Subject Of A Prosecution By DOJ And A Plea Agreement.

The SLD Initial and Second Demand Letters and the USAC Decisions are part of an administrative process developed by USAC and the Commission to identify and recover, pursuant to the Federal Debt Collection Improvement Act ("DCIA"), funds disbursed in violation of Section 254 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See Schools and Libraries Fifth R&O at ¶15. However, the Commission's rules expressly state that claims "in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor...shall be referred to the Department of Justice ("DOJ") as only the DOJ has authority to compromise, suspend or terminate collection action on such claims." See 47 C.F.R. §1.1902(c) (emphasis added). In this case, DOJ already has investigated and prosecuted claims of fraud against Mr. Angelides which included the activities that are the subject of the Initial and Second Demand Letters.⁸ In fact, in December 2002 the FBI seized Connect2's records regarding its participation in the Schools and

⁸ See, e.g. Consolidated Requests for Review for Petitions for Waiver filed December 27, 2004 (3 petitions filed with respect to 11, 9, and 1 schools, respectively); Request for Review filed February 14, 2005 (regarding Childrens Store Front School). The criminal complaint against Mr. Angelides is attached as Exhibit 3 to the December 27, 2004 Consolidated Request for Review, 471 Application Nos. 184985 et al., Funding Request Nos. 383870 et al. (the "Nine School Petition").

Libraries Program in furtherance of that prosecution, in which USAC and the Commission activity participated.

DOJ agreed to compromise those claims in May 2003 in return for a guilty plea from Mr. Angelides and an agreement to pay a civil forfeiture in the amount of \$290,000, which DOJ determined to be "the approximate amount of the proceeds obtained as a result of the offense charged in Count One of the Information."⁹ Both USAC and OIG assisted and cooperated in that prosecution, providing DOJ with access to documents, materials, audit services and other information regarding Connect2. In return for the guilty plea and the agreement to pay \$290,000, DOJ agreed that it would not further prosecute Mr. Angelides or Connect2 "for participating, from in or about the Fall 1999 through in or about October 2002, in a scheme to defraud the Federal Government's E-Rate schools and library funding program through the submission of false, fraudulent and misleading claims and statements...." Plea Agreement at 2. Given the mandatory referral language of §1.1902(c) of the Commission's Rules, the direct involvement of USAC and OIG with DOJ in bringing the complaint, and the compromise already effected by DOJ in the plea agreement, USAC and the Commission cannot now revisit the terms of the compromise with DOJ by seeking recovery of additional funds from Connect2 based on rules and procedures adopted in the interim.

III. Connect2 Has Been Denied Due Process With Respect To The SLD Claims

Connect2 has been denied due process from the outset with respect to the recovery demands being asserted by USAC for AES. USAC dismissed Connect2's appeal of the demands set forth in the Initial and Second Demand Letters because the appeal was "postmarked

⁹ See Information, attached as Exhibit 4 to the Nine School Petition, at 11; see also Plea Agreement, attached as Exhibit 5 to the Nine School Petition, at 1.

more than 60 days after the date your Notification of Commitment Adjustment Letter was issued.” However, as set forth above, Connect2 never received any such “Notification” letters with respect to these recovery demands -- in fact, that was one of the issues raised in its appeal.

In any event, Connect2 was not provided with a copy of the Audit Report concerning AES until **after** USAC already allegedly had issued Notification of Commitment Adjustment Letters to Connect2. That Audit Report shows that the audit was conducted at AES during the summer of 2004, several years after the 1998 Funding Requests that are the subject of the USAC Demand Letters issued to Connect2. Obviously, there have been many developments at the school during the intervening years which may have affected the audit findings, particularly as they relate to the USAC Demand Letters. For example, the Audit Report states that when presented with the audit findings and asked to respond to them, the current principal of AES stated that “none of the school management...that was present during the period under audit is still associated with the school” and that “no files regarding the E-rate applications are available for reference.” See OIG Audit Report at 1.

Connect2 was never afforded a timely opportunity to review the audit findings, to examine the auditors to determine what information and documents they relied upon to reach their conclusions, or how they calculated the amount of funds to be recovered. Likewise, Connect2 was never afforded an opportunity to question other parties as to other possible explanations for the alleged violations. Connect2 repeatedly has requested an opportunity to inspect and copy all of the records upon which USAC has based its decision to seek to recover funds from Connect2. Those requests have been ignored.

At a minimum, Connect2 should be afforded a hearing and an opportunity to conduct discovery to explore alternative explanations for the missing equipment and substituted

services at the school,¹⁰ including any role that might have been played by any intervening service provider, any "consultant" for the Archdiocese,¹¹ or any of the former school management personnel. While copies of the Audit Report apparently were provided to USAC, the Chief of the Wireline Competition Bureau and the principal of AES in August 2004, a copy was not sent to Connect2 until more than 8 months later -- well after the Notification of Commitment Adjustment Letters allegedly had been sent to Connect2.

Finally, the audit materials provided by SLD indicate that the only procedural avenues available currently to Connect2 to contest SLD's recovery demands require Connect2 to submit appeals and/or requests for review of those demands to the very same authorities who decided to issue the demands in the first place. See 47 C.F.R. §§54.719 and 54.722. Correspondence among OIG, the Wireline Competition Bureau, the Commission and USAC indicates that USAC and the Wireline Competition Bureau already have prejudged the issue of Connect2's responsibility for the alleged missing equipment and service substitutions notwithstanding the passage of time and the intervening activities of the school management and all third parties. The initial Audit Report at Exhibit 2 hereto, did not include any recommendation to seek recovery of funds from FY 1998. See OIG Audit Report at 8. The Wireline Competition Bureau recommended that USAC seek recovery for that period. See

¹⁰ For example, the Commission did not modify rules regarding service substitutions and prohibiting the transfer of equipment from one school to another until December 2003. See *Schools and Libraries Universal Service Support Mechanism, Third Report and Order*, 18 FCC Rcd. 26912 (Dec. 2003), at ¶¶25-30, 43.

¹¹ For example, an OIG Audit of St. Augustine School (which, like AES, is located in the Archdiocese of New York) states that the school had changed service providers in FY 2000 "at the recommendation of a consultant that worked for the Archdiocese." OIG subsequently discovered that the "consultant" was also "connected to Elite Systems [the new service provider], by either family or ownership, while working for the Archdiocese." See Report on Audit of the E-Rate Program at St. Augustine School, Report No. 02-AUD-02-04-017, p. 7-8 (May 19, 2004). The auditors specifically stated that they were "not able to determine if this connection [between the consultant and the new service provider] resulted in unfair or unethical practices on the part of Elite Systems," at the St. Augustine School. *Id.* at 8. The OIG Audit Report for AES does not indicate whether the same consultant for the Archdiocese was involved at AES.

Carlisle Memo, Exhibit 2 hereto, at 2. Now, Connect2's request for review of that decision apparently will be directed in the first instance back to the Wireline Competition Bureau that suggested recovery of the funds for Funding Year 1998 in the first place. See 47 C.F.R. §54.722.

IV. The Amounts Involved In The Initial and Second Demand Letters Are De Minimis

The Commission has concluded that "it does not serve the public interest to seek to recover funds associated with statutory or rule violations when the administrative costs of seeking such recovery outweigh the dollars subject to recovery." Schools and Libraries Fifth R&O at ¶35. With respect to the two Funding Requests at issue here, the total amount of recovery sought by SLD is less than \$20,000. There is no question that the administrative costs of pursuing to their ultimate conclusion the recovery efforts on this funding request will exceed \$20,000. The Commission has directed USAC "not to seek recovery of such de minimis amounts" under these circumstances and it should exercise its discretion to terminate collection activity with respect to this matter. See 47 C.F.R. §1.1916; Schools and Libraries Fifth R&O at ¶35.

Conclusion

For the reasons set forth above, Connect2 respectfully requests the Commission to grant review of the USAC Decision, to waive the requirements of Section 54.720 of the rules if such waiver is necessary to consider the merits of Connect2's appeal, and to terminate collection activity with respect to the above-referenced Funding Requests. If the Commission decides to pursue collection, Connect2 respectfully requests an opportunity for hearing with respect to the recovery demands at issue here.

Date: October 27, 2005

Respectfully submitted,

CARTER LEDYARD & MILBURN LLP

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EXHIBIT 1



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 1998-1999

August 31, 2005

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Re: Applicant Name:	ANNUNCIATION ELEMENTARY SCHOOL
Billed Entity Number:	10089
Form 471 Application Number:	105155
Funding Request Number(s):	106036, 106514
Decision Letter Date:	March 15, 2005
Date Appeal Postmarked:	June 22, 2005
Your Correspondence Dated:	June 22, 2005

Our records show that your appeal was postmarked more than 60 days after the date your Notification of Commitment Adjustment Letter was issued, as shown above. Federal Communications Commission (FCC) rules require applicants to postmark appeals within 60 days of the date on the decision letter being appealed. FCC rules do not permit the Schools and Library Division (SLD) to consider your appeal.

If you believe there is a basis for further examination of your application, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

Schools and Libraries Division
Universal Service Administrative Company

EXHIBIT 2



OFFICE OF INSPECTOR GENERAL

MEMORANDUM

DATE: August 12, 2004

TO: Chairman

FROM: Inspector General

SUBJECT: Report on Audit of the E-rate Program at Annunciation Elementary School

The Office of Inspector General (OIG) has completed an audit at Annunciation Elementary School (AES), a beneficiary of the Universal Service Fund (USF). A copy of our audit report no. 02-AUD-02-021, entitled "Report on Audit of the E-rate Program at Annunciation Elementary School" is attached. The objective of this audit was to assess the beneficiary's compliance with the rules and regulations of the USF program and to identify program areas which may need improvement.

We concluded that AES was not compliant with the requirements of the program for funding years 1998 through 2001. The audit resulted in six (6) specific findings and \$129,003 identified as potential fund recoveries. We recommend that the Wireline Competition Bureau direct the Universal Service Administrative Company (USAC) to recover the amount of \$129,003 disbursed on behalf of AES for funding years 1998 through 2001. In addition, we recommend that the Wireline Competition Bureau take steps to ensure that funding requests are adequately reviewed in accordance with existing program rules and implementing procedures to make certain that funding requests associated with these areas of noncompliance with program rules and regulations are not approved. Further, we recommend that the Wireline Competition Bureau review those program rules and implementing procedures governing the areas of noncompliance cited in this report to ensure that those program rules and implementing procedures are adequate to protect the interests of the fund.

An exit conference with the beneficiary's representative was held on July 21, 2004. The representative (the school principal) stated he was unable to comment on the findings. He stated that none of the school management or the E-rate consultant that was present during the period under audit is still associated with the school and no files regarding the E-rate applications are available for reference. As a result, the school representative did not state whether he concurred or did not concur with the audit findings.

We provided management with a copy of our draft report on July 29, 2004 and requested they provide comments on their concurrence with the findings of the audit. In a response dated August 11, 2004, the Wireline Competition Bureau (WCB) indicated that they concurred with two of our three audit recommendations and did not concur with the third recommendation, based on a duplication in our calculation of recommended funding recoveries. We agree with their recommendation and have revised our audit report accordingly. WCB's response is included in its entirety in the Appendix to this report.

If you have any questions, please contact Thomas Cline, Assistant Inspector General for Audits, at (202) 418-7890.

A handwritten signature in black ink, appearing to read "H. Walker Feaster III", followed by a stylized flourish or initial.

H. Walker Feaster III

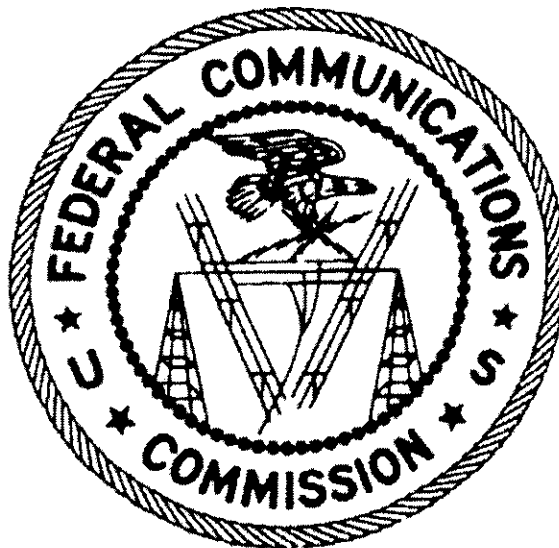
Attachment

Copy furnished:

Mr. D. Smithers, Principal, Annunciation Elementary School
Vice President, Schools and Libraries Division, USAC
Chief, Wireline Competition Bureau
Performance Evaluation and Records Management, Office of Managing Director

FEDERAL COMMUNICATIONS COMMISSION

OFFICE OF INSPECTOR GENERAL



**Report on Audit of the E-rate Program
at Annunciation Elementary School**

Report No. 02-AUD-02-04-21

August 12, 2004

H. Walker Feaster III
Inspector General

Thomas D. Bennett
Assistant Inspector General for USF
Oversight

Vince Amalfitano
Senior Auditor

Thomas C. Cline
Assistant Inspector General for Audit